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*Steering Committee Co-Chairs for All
Plaintiffs in Consolidated Action*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE META PIXEL TAX FILING CASES

Master File No. 3:22-cv-07557-SI

PUTATIVE CLASS ACTION

This Document Relates To:

**JOINT STATEMENT REGARDING
COORDINATION OF DISCOVERY
AND INTERIM DISCOVERY
DEADLINES**

Case No. 3:22-cv-07557-SI, All Actions

Date: May 23, 2023
Time: 1:30 p.m.
Courtroom: 2, 5th Floor
Judge: Hon. Virginia K. DeMarchi

Action Filed: December 1, 2022

1 In accordance with the Court’s direction at the April 20, 2023 Discovery Conference, *see* Dkt.
2 57, the parties in *In re Meta Pixel Tax Filing Cases*, Case No. 3:22-cv-07557-SI (VKD), *In re Meta*
3 *Pixel Healthcare Litigation*, Case No. 3:22-cv-3580-WHO (VKD), and *Gershzon v. Meta*, Case No.
4 3:23-cv-00083-SI (VKD), have continued to meet and confer regarding “(1) whether and to what extent
5 aspects of discovery should be coordinated; and (2) whether any interim discovery deadlines [] should
6 be set” *See* Dkt. 57. The Tax Plaintiffs’ proposed order on coordination of discovery and interim
7 deadlines is attached as Exhibit A.¹

8 The parties to the above-captioned matter submit this Joint Statement in advance of the May
9 23, 2023 discovery conference.

10 **1. COORDINATED DISCOVERY**

11 ***Plaintiffs’ Statement:***

12 While there are indisputably common factual issues in the *Healthcare*, *Tax*, and *Gershzon* Cases
13 (the “Three Cases”), there are factual issues unique to each of the Three Cases that can and should
14 move forward *simultaneously* with any common discovery. Factual discovery tailored to the *Tax* Cases
15 will include (i) discovery relating to the online tax-filing websites at issue in this consolidated action
16 (H&R Block, TaxAct, TaxSlayer, and others), (ii) all aspects of the proposed class and class
17 representatives in the *Tax* Cases and class certification discovery, (iii) discovery concerning Meta’s
18 internal documents and communications relating to online tax-filing website advertising, and (iv)
19 Meta’s receipt, sharing, handling, and other uses of class members’ tax-filing information, including
20 filing status, income, refunds, health savings account usage, dependents’ names, and other confidential
21 financial information prepared for or transmitted to the Internal Revenue Service or state-level tax
22 authorities.

23 The ground rules established by the parties and the Court governing consistent clawback,
24 protective, and ESI orders in each case will promote judicial economy and efficiency both in common
25 discovery and/or discovery unique to each of the Three Cases. Going forward, however, Plaintiffs in
26 the *Tax* Case oppose any proposal that undermines the rights and independence of the parties and the
27

28 ¹ Because the Court did not direct the parties to include a Proposed Order with this Joint Statement, Meta will
instead provide one after the May 23, 2023 conference, to the extent that would be helpful to the Court.

1 separate sets of lawyers handling the Three Cases by imposing strictures that would require plaintiffs
2 in separate cases to rely on lawyers in other cases to conduct discovery on their behalf. It is paramount
3 that discovery proceed in accordance with clear, yet flexible, guidelines that will promote efficiency
4 *without* infringing upon the autonomy of each set of lawyers for the Plaintiffs. Accordingly, the *Tax*
5 Plaintiffs propose the following framework for coordinating discovery.

6 ***(1) Progression of Discovery***

7 On Monday, May 15, 2023, the *Tax* Plaintiffs filed their Consolidated Class Action Complaint,
8 Dkt. 71. Meta intends to move to dismiss that Complaint. On March 31, 2023, Meta filed its motion to
9 dismiss the *Gershzon* case, which is set for hearing on June 9, 2023. Judge Illston has ordered that
10 discovery will proceed in the *Gershzon* case during the pendency of motion practice. Likewise, the
11 motion to dismiss the *Healthcare* case will be fully briefed by July 17, 2023, and Judge Orrick
12 instructed that discovery will proceed during the pendency of that dismissal motion.

13 The *Tax* Plaintiffs' position is that discovery should proceed concurrently in the Three Cases
14 per the common discovery orders across all cases, and that coordination should facilitate the progress
15 of discovery but not cause or enable delays in one case due to developments in another. That is
16 especially important to the *Tax* Plaintiffs, who anticipate that only a modest share of the documents
17 and information they are seeking in discovery will be common across the Three Cases.²

18 ***(2) Coordination of Written Discovery and Document Production***

19 The plaintiffs in the Three Cases have each served Requests for Production ("RFPs") and the
20 *Healthcare* and *Gershzon* Plaintiffs have also served initial sets of Interrogatories. Meta has only
21 responded to the Healthcare Plaintiffs' RFPs and Interrogatories, in accordance with Judge Orrick's
22 order allowing discovery to proceed in the *Healthcare* case. The *Tax* Plaintiffs understand that
23 negotiations between the Healthcare Plaintiffs and Meta regarding these requests are ongoing.

24 Following several meet-and-confer sessions with Meta, the *Tax* Plaintiffs welcome Meta's
25 retreat from seeking to require the plaintiffs in the Three Cases to coordinate regarding written
26 discovery already issued in each case that might produce relevant documents in the other cases.

27 ² To give an example, the *Tax* Plaintiffs' case principally involves a limited number of third-party
28 websites run by H&R Block, Tax Slayer, Tax Act, and others, whereas the *Healthcare* Plaintiffs' case
involves hundreds (if not thousands) of healthcare websites.

1 However, the *Tax* Plaintiffs do not believe requiring the plaintiffs to issue single sets of written
2 discovery for all future “global” prompts would achieve any significant efficiencies where a “global”
3 prompt would , and even if it did, such benefits would be substantially outweighed by the unacceptable
4 loss of each set of plaintiffs’ autonomy to conduct discovery. Instead, the *Tax* Plaintiffs are agreeable
5 to identifying specific requests in the *Healthcare* and *DMV* cases’ written discovery that request
6 documents or information that is also discoverable in the *Tax* cases (“Common Discovery”), such that
7 Meta will thereafter respond to or produce that Common Discovery to all Plaintiffs, subject to any valid
8 objections by Meta that the requests so identified are not relevant to a particular case. Notwithstanding
9 Meta’s now pared-back proposal, it is the *Tax* Plaintiffs’ position that cross-identification of
10 discoverable information will naturally create workflow efficiencies for Meta in its collection and
11 production of discoverable information. This will also reduce the burden on plaintiffs in each of the
12 Three Cases to issue additional discovery requests that seek the same documents or information as their
13 counterparts have already sought.

14 Notably, after meeting and conferring with Meta, it is clear that the “Global” discovery that
15 Meta refers to in its proposal does not necessarily mean identical or even “common” to the Three Cases.
16 Rather, “Global” means not only identical or substantially similar temporally and substantively (i.e.,
17 organizational charts requested in the Three Cases), but to Meta also means the same category or type
18 of documents or data in Meta’s perspective (based upon how this category or type of documents and
19 data is stored, organized, and pulled for production by Meta) even if the documents are very different.
20 When “global” does not mean common, it is a recipe for disaster.

21 Given the significant differences between the cases, the *Tax* Plaintiffs do not believe that
22 identification and sharing of Common Discovery provides a reason for imposing numerical limits on
23 the parties’ case-specific written discovery requests as Meta demands. Rather, the *Tax* Plaintiffs urge
24 the Court to recognize such limitations as premature and request that no limitations on written
25 discovery be imposed beyond those set forth in the Federal Rules of Civil Procedure. Going forward,
26 the *Tax* Plaintiffs urge that any written and document discovery limitations should be proposed,
27 considered, and imposed by the Court on an individual-case basis.

1 To facilitate the effective coordination of written and document discovery, the *Tax* Plaintiffs
2 also recognize the need for consistent document-production, privilege-log, and redaction-log deadlines
3 in the Three Cases set well ahead of the close of discovery. Accordingly, the *Tax* Plaintiffs propose
4 interim document-production deadlines for (1) final completion of production of all requested data
5 about class representatives and proposed classes and subclasses, (2) substantial completion of
6 document production with sufficient time for review prior to coordinated depositions, and (3) final
7 document-production, with a reasonable amount of time left for the parties to brief and have the court
8 hear final discovery-related motions. Furthermore, the *Tax* Plaintiffs propose that privilege- and
9 redaction-log deadlines be set twenty-eight (28) days after each interim document-production deadline,
10 in time for related disputes to be raised during discovery period without delays of coordinated
11 depositions or trial.

12 ***(3) Coordination of Depositions***

13 The *Tax* Plaintiffs have not yet requested deposition dates of Meta fact witnesses, and they are
14 still in the process of identifying persons with knowledge of facts relevant to their case. That being the
15 case, and in recognition of their good working relationships with the *Healthcare* and *Gershzon*
16 Plaintiffs, the *Tax* Plaintiffs propose that fact witnesses common to more than one case (“Common
17 Witnesses”) shall be deposed only once across the Three Cases where such scheduling is practicable
18 would not cause delay. To give a non-exhaustive list of examples of where scheduling a single
19 deposition would be impracticable or cause delay, the *Tax* Plaintiffs propose that a Common Witness
20 could be deposed more than once, where one or more other sets of plaintiffs (a) have not received a
21 substantial production of custodial documents for that witness, (b) have a pending discovery dispute
22 pertaining to that witness or their documents, or (c) otherwise are not in a position to depose that witness
23 given the state of document discovery in their case or cases.³ At each such deposition where plaintiffs

24
25 ³ In response to these examples, Meta raises the specter of one case’s plaintiffs taking advantage of
26 another case’s plaintiffs’ being unprepared to take a particular Common Witness deposition by racing
27 to take a solo deposition. Leaving aside the unlikelihood of that hypothetical, the *Tax* Plaintiffs note
28 their agreement with the Court’s skepticism about whether “it’s useful to have depositions generally
before there’s substantial completion of the documents that related to those depositions.” April 20,
2023 Hearing Tr. 142:13–15. Accordingly, it is the *Tax* Plaintiffs’ position that if one set of plaintiffs
is ready to take a Common Witness deposition and Meta’s inadequate production of relevant witness-

1 from two or three cases question a Common Witness, the *Tax* Plaintiffs propose that each of the three
2 plaintiffs' groups shall have the right to question the Common Witness using one lawyer per each
3 plaintiffs' group. For all Common Witness depositions, the plaintiffs participating in the deposition
4 shall coordinate with one another to issue a single notice of deposition designating mutually agreeable
5 dates. To facilitate the identification of common witnesses, the *Tax* Plaintiffs request that the Court
6 require the plaintiffs to disclose to one another every witness they intend to depose at or before the time
7 they communicate their intention to depose that witness to Meta.

8 The *Tax* Plaintiffs are also agreeable to imposing some time limits on the depositions of
9 Common Witnesses to reduce the time and expense of depositions, with the goal of enabling most
10 depositions to conclude in two consecutive days or less. Accordingly, for Common Witness
11 depositions, the *Tax* Plaintiffs propose that for Common Witnesses designated by plaintiffs in two
12 cases, a total time limit of twelve (12) hours be imposed. Similarly, the *Tax* Plaintiffs propose a total
13 time limit of fifteen (15) hours for Common Witnesses designated by plaintiffs of all three cases. The
14 *Tax* Plaintiffs propose these limits—which will reduce the collective time limits on plaintiffs below the
15 standard seven (7) hours per party permitted under the Federal Rules of Civil Procedure—to account
16 for the efficiencies likely to result from the plaintiffs' opportunity to attend Common Witness
17 depositions and use testimony from one another's questioning. However, the *Tax* Plaintiffs' position is
18 that any further limiting of Common Witness deposition time would impose limitations greater than is
19 appropriate given the anticipated differences of essential proof in each case. On the other hand, the *Tax*
20 Plaintiffs urge the Court to set specific hour limits now, so the parties have clear guidelines governing
21 Common Witness Depositions. It is the *Tax* Plaintiffs' position that Meta's proposal that the Court
22 leave this matter unresolved so the parties across the Three Cases can "meet and confer on appropriate
23 witness-specific limits on a case-by-case basis" would thwart coordination, not facilitate it. After all,
24 waiting for the several sets of parties to agree on witness-specific time limits for each separate case
25 could easily spend more time than unlimited, uncoordinated depositions conducted pursuant to the
26 Federal Rules of Civil Procedure.

27 _____
28 specific documents in one of the cases is preventing another set of plaintiffs from being ready, that
Common Witness's deposition should not be delayed so that she is only deposed once.

1 The *Tax* Plaintiffs also join Meta’s proposal to prohibit the deposition of an already-deposed
2 witness by plaintiffs who earlier failed to designate that person as a Common Witness for their case,
3 with the two caveats that (1) plaintiffs should be allowed to depose such a witness over Meta’s
4 objections for good cause shown; and (2) plaintiffs should be allowed to obtain the transcript and video
5 of any fact-witness deposition they chose not to attend, unless good cause can be shown.

6 Though the *Tax* Plaintiffs appreciate Meta’s withdrawal of its proposal to require the plaintiffs
7 to elect a single lawyer to ask “global” questions about matters common to all cases, its proposal to
8 require the plaintiffs’ groups to coordinate to ensure they do not ask overlapping questions and topics
9 imposes an almost equal imposition on their independence and autonomy. Even worse, it is no better
10 than taking a more flexible approach where Meta can use objections to protect its witnesses. For
11 example, Meta can make objections to questions that have been “asked and answered” earlier in the
12 deposition, even if asked by other lawyers. This will lead to a more equitable, and likely easier and
13 more cooperative, coordination of plaintiffs’ deposition questioning. Perhaps most importantly, this
14 more flexible approach will not foment disputes among the plaintiffs’ groups, which could result in
15 delays and even the need for the Court’s intervention.

16 ***(4) Coordination of Discovery Disputes***

17 With respect to all written discovery and document production, it is the *Tax* Plaintiffs’ position
18 that lead counsel in each of the Three Cases must retain full control of their respective (1) written
19 discovery requests; (2) negotiations with Meta over the scope of Meta’s discovery responses and
20 document production (including with respect to Meta’s production of documents in each case pursuant
21 to Common Discovery prompts); (3) negotiations with Meta regarding search terms; and (4)
22 negotiations with Meta over custodians.⁴ To enable coordination of any disputes common to more than
23 one of the Three Cases, the *Tax* Plaintiffs propose that the Court require the plaintiffs in the Three
24 Cases to inform one another in advance of raising with the Court any discovery disputes that involve
25 Common Discovery or Common Witnesses, so they may file joint discovery motions or responses, or
26 file joinders in whole or in part on the same.

27 _____
28 ⁴ The *Tax* Plaintiffs’ understanding is that lead counsel in the Three Cases are in agreement on this point.

1 The Tax Plaintiffs look forward to discussing its coordination proposals and proposed
2 coordination order at the Court’s upcoming hearing.

3 ***Meta’s Statement:***

4 In the Joint Statements submitted to this Court on April 13, 2023, Meta proposed a framework
5 for coordinating discovery across *In re Meta Pixel Tax Filing Cases*, *In re Meta Pixel Healthcare*
6 *Litigation*, and *Gershzon* (collectively, the “Pending Cases”). Dkt. 51. At the April 20, 2023
7 conference, the Court agreed that there are “efficiencies . . . to some coordination on discovery,” April
8 20, 2023 Hearing Tr. 9:2–3, and directed the parties, prior to the May 23, 2023 conference, to “reflect
9 on the discovery needs that are common to the three sets of cases,” *id.* 8:2–4. The Court conveyed that
10 its “goal”—and the parties’ “goal as well”—should be “to avoid inefficiency and undue burden on any
11 party.” *Id.* 7:24–8:1.

12 As set forth below, Meta listened to the Court’s specific guidance, and now proposes a
13 reasonable but limited approach for discovery coordination. Meta believes that its coordination
14 proposal will reduce inefficiencies and undue burden for both the Court and the parties.

15 To the extent it is helpful to the Court, Meta first provides a brief overview of the current status
16 of each of the Pending Cases:

17 In the *Healthcare* case, Meta’s motion to dismiss will be fully briefed on July 17, 2023, and the
18 motion is set for hearing on August 16, 2023. Discovery in that case has started. To date, the
19 *Healthcare* plaintiffs have served a first set of interrogatories and requests for production (“RFPs”), to
20 which Meta has responded. The parties are in the process of negotiating the scope of those requests.
21 On May 1, 2023, the parties filed three discovery dispute letters regarding Meta’s responses to plaintiffs’
22 discovery requests. Those disputes are set for hearing on May 23, 2023.

23 In *Gershzon*, Meta filed its motion to dismiss on March 31, 2023, and that motion is set for
24 hearing on June 9, 2023. Discovery in *Gershzon* began on April 20, 2023. The *Gershzon* plaintiff has
25 also served a first set of interrogatories and RFPs. Meta’s responses and objections are due May 22,
26 2023.

1 In the *Tax* case, the plaintiff filed a consolidated complaint on May 15, 2023. Meta intends to
2 move to dismiss that complaint. Although one plaintiff served requests for production prior to the
3 filing of the consolidated complaint, discovery has not yet begun in earnest.

4 As instructed by this Court, the parties across the Pending Cases have negotiated a Clawback
5 Order, a Protective Order, and an ESI Protocol. This Court has entered the Clawback Order, and ruled
6 on the parties remaining disputes regarding the Protective Order, and the final disputes relating to the
7 ESI Protocol are pending before the Court.

8 Taking into account this Court's guidance, and the status of each of the Pending Cases,
9 Meta's proposal for coordinating discovery across the cases, as it relates to depositions, discovery
10 disputes, and requests for production is as follows:

11 ***(1) Coordinated depositions***

12 At the April 20, 2023 conference, the Court directed the parties to "do something about
13 coordinating depositions so that the same person doesn't have to testify on three different occasions
14 to the same material." April 20, 2023 Hearing Tr. 8:14–16. Consistent with the Court's guidance,
15 Meta proposes that fact witnesses be deposed only once across the Pending Cases.

16 Meta proposes that depositions of Meta witnesses proceed as follows: The plaintiffs' group
17 will together decide on the Meta witnesses whose testimony is relevant to more than one case, issuing
18 a single notice or subpoena for each witness. The plaintiffs' group must also coordinate depositions of
19 third-party witnesses, where the interest in minimizing burden on witnesses is even stronger. However,
20 Meta has no objection to Tax Plaintiffs' proposal that the plaintiffs' group may issue multiple
21 subpoenas to third-party witnesses, so long as those subpoenas are coordinated such that a witness is
22 only deposed once across the Pending Cases. This logical coordination amongst the plaintiffs' group,
23 as this Court has directed, *id.*, will avoid the hypothetical Tax Plaintiffs have raised in which one set
24 of plaintiffs seeks to depose a witness before another set of plaintiffs is ready.⁵

26 ⁵ Plaintiffs' baseless suggestion that "inadequate production" of documents from Meta in one case
27 could impact plaintiffs' ability to coordinate on depositions only underscores why discovery should be
28 coordinated across the Pending Cases. Meta will do its part to identify overlapping and duplicative
discovery, but plaintiffs in the Pending Cases should also do their part to talk to one another and
coordinate so that—for example—a witness is not deposed multiple times in the Pending Cases.

1 The plaintiffs' group can determine among themselves which counsel will ask global questions
2 that apply to issues relevant to two or more of the Pending Cases; Meta does not object to more than
3 one lawyer asking global questions, but the plaintiffs should coordinate so that different lawyers are
4 not covering the same topics.⁶ Counsel for Meta would then have an opportunity to ask redirect
5 questions on global issues. The questions and answers during this portion of each deposition would be
6 treated as if taken in all of the Pending Cases.

7 After the global portion, counsel representing plaintiffs in each of the individual Pending Cases
8 would have the opportunity to ask the witness case-specific questions (one attorney per case) outside
9 the presence of counsel for the other plaintiffs. Counsel for Meta would then have an opportunity to
10 ask redirect questions on case-specific issues. The questions and answers during these sections of each
11 deposition would be treated as if taken in the individual case to which that section applies.

12 Depositions will proceed most efficiently for both the witness and for all parties if the plaintiffs'
13 group coordinates to avoid asking the same questions multiple times. If, as Tax Plaintiffs propose, the
14 plaintiffs' group merely splits their time allocation without coordinating in advance on global topics
15 and questions, Meta will be forced object during the deposition to questions asked more than once. A
16 primary goal of coordinating depositions is to avoid having the same witness address the same
17 questions and topics multiple times. Tax Plaintiffs' proposal does not advance that goal.

18 The plaintiffs' group should also coordinate the time allocation between the "global"
19 questioning and the case-specific questioning described above. Meta anticipates that, while the
20 standard 7-hour period will be appropriate for certain witnesses, in some circumstances where a witness
21 is deposed on both "global" and case-specific issues, the parties will work together to schedule an
22 adequate amount of on-the-record time in excess of the time limits established by Fed. R. Civ. P.
23 30(d)(1). Meta believes it is premature to set specific hour-limits now, as different witnesses will
24 require different amounts of questioning, and Meta expects that the parties can meet and confer on
25
26

27 ⁶ Requiring that plaintiffs in the Pending Cases coordinate in advance of a deposition will ensure the
28 questioning is coordinated and non-duplicative. In contrast, relying on Meta to interpose "asked and
answered" objections to police plaintiffs' duplicative questioning would not be efficient.

1 appropriate witness-specific limits on a case-by-case basis.⁷ Further, Meta is skeptical that the
2 plaintiffs' group will require 15 hours of deposition testimony with any witness in these matters, as
3 Tax Plaintiffs propose.

4 The parties may also take depositions that are relevant only to a single case, so long as all parties
5 agree that the witness may not later be deposed a second time in any of the Pending Cases. In this
6 situation, the deposition would proceed in a standard fashion, with the deposition being treated as taken
7 only in that specific case, and with only the relevant parties present.

8 Meta disagrees with the Tax Plaintiffs' proposal regarding depositions that they argue need not
9 be coordinated, where "plaintiffs (a) have not received a substantial production of custodial documents
10 for that witness, (b) have a pending discovery dispute pertaining to that witness or their documents, or
11 (c) otherwise are not in a position to depose that witness given the state of document discovery in their
12 case or cases." Ex. A. These proposed criteria could lead to a race among plaintiffs to depose witnesses
13 in one case before the plaintiffs in another case are similarly situated according to Tax Plaintiffs; this
14 is the opposite of coordination, and it would only lead to duplicative questioning and inconvenience to
15 witnesses, among other things.

16 ***(2) Discovery Disputes***

17 Meta is mindful of the Court's guidance that if it is "going to get discovery disputes, [it] would
18 rather not have to deal with the same or similar issues on three different occasions." April 20, 2023
19 Hearing Tr. 8:21–23. Meta agrees with Tax Plaintiffs' proposal for the Court to direct the parties to
20 make all reasonable efforts to coordinate on the filing of any discovery dispute briefs. Given the
21 obvious "overlap . . . in terms of discovery" between the Pending Cases, *id.* 7:22–23, if one plaintiff
22 intends to bring a dispute to the Court, it should be required to confer with the other plaintiffs, so that
23 any interested plaintiff can participate in filing a joint discovery dispute brief or motion. This direction
24 will be important to reduce the overall volume of motion practice across the Pending Cases.

25
26 ⁷ Meta does not agree that conferring as to deposition time limits for specific witnesses "could easily
27 spend more time than unlimited, uncoordinated depositions." However, if time limits do become a
28 frequent point of contention once discovery progresses, Tax Plaintiffs are free to seek an order at that
time, with the benefit of a better understanding of the necessary scope of discovery in this case and
input from plaintiffs in the other Pending Cases.

1 ***(3) Coordinated written discovery***

2 Prior to the April 20, 2023 conference, Meta proposed a framework for coordinating written
3 discovery across the Pending Cases. At the April 20, 2023 conference, the Court did not address Meta’s
4 specific proposal on written discovery, but directed the parties to consider “whether, for example, some
5 of Meta’s document production can be shared across all cases. So maybe it occurs in the first instance
6 in the healthcare party case because that case is ahead of the others” April 20, 2023 Hearing Tr.
7 8:5–10. Meta now proposes a framework it believes adheres to this guidance.

8 Meta is not now re-proposing that all written discovery be coordinated across the Pending Cases.
9 Rather, Meta has significantly narrowed its proposal, including to take into account plaintiffs’
10 vehement opposition to coordinating written discovery. Meta believes that the greatest efficiency to
11 be gained is by coordinating any further requests for production (rather than going back now to identify
12 which already-served requests are global in nature).

13 Meta thus proposes that, to the extent plaintiffs intend to seek any further requests for
14 production on issues relevant to two or more cases, the plaintiffs’ group will work together to issue and
15 serve coordinated, written “global” discovery requests. The plaintiffs’ group will issue one copy of
16 written discovery requests to Meta on these “global” issues, rather than issuing duplicative requests
17 covering overlapping topics across the three cases. Meta may do the same to the extent there are
18 efficiencies to be gained by issuing a single set of requests to all plaintiffs at once. Meta’s responses
19 to any “global” request will be produced to all parties (once discovery is underway in all cases), and
20 any documents will be treated as having been obtained through discovery in each of the Pending Cases
21 and produced to all plaintiffs, except to the extent Meta determines a “global” request implicates case-
22 specific documents, in which case documents specific to each case will be produced to the relevant
23 plaintiffs. Meta believes this compromise proposal addresses Plaintiffs’ concern regarding delays
24 arising over what constitutes a “global” request.

25 Plaintiffs in individual cases may also serve further case-specific written discovery requests on
26 Meta, up to certain numerical limits agreed to by the parties or ordered by the Court. To be clear, Meta
27 is not proposing that the service of case specific requests be sequenced after “global” requests; rather,
28 both “global” and case-specific requests can proceed simultaneously.

1 Meta's responses to case-specific requests, and any documents Meta produces for case-specific
2 requests, will be sent only to the plaintiffs that issued the request and will be treated only as having
3 been obtained in that particular case.

4 Meta does not, however, agree with Tax Plaintiffs' proposal, which would permit the plaintiffs'
5 group to serve unlimited "global" discovery requests *and* join case-specific requests served by other
6 plaintiffs with no impact on the numerical limits for case-specific requests set by the Federal Rules.
7 Such a proposal does not serve the Court's stated goals in recommending discovery coordination,
8 namely, "to avoid inefficiency and undue burden on any party." April 20, 23 Hearing Tr. 7:24–8:1.

9 **(4) Conclusion**

10 As discussed above, this Court has already identified benefits of coordinated discovery,
11 specifically as to depositions, discovery disputes, and document production, and Meta's proposal
12 focuses narrowly on the efficiencies to be gained through coordinated discovery. *See also Pieterston v.*
13 *Wells Fargo Bank, N.A.*, 2019 WL 1465355, at *2 (N.D. Cal. Feb. 8, 2019) ("[c]oordination is an
14 inherently flexible practice and may be accomplished in many ways," including by "taking care to
15 avoid duplicative discovery").

16 Meta recognizes that there are some differences between the Pending Cases, which is why its
17 revised proposal contemplates that the plaintiffs in each case maintain the already-served requests for
18 production that pre-date any coordination and can continue to make case-specific written discovery
19 requests, in addition to any future global requests. *See, e.g.*, Manual for Complex Litigation, Fourth, §
20 20.14 (directing judges to "encourage techniques that coordinate discovery and avoid duplication" in
21 coordinating several cases); *see id.* §§ 11.423, 11.443, 11.452, and 11.464. The same is true for
22 depositions: Meta's proposal contemplates that the parties will work together to arrange depositions
23 to cover both global *and* case-specific issues, while avoiding unnecessary duplication of effort and
24 burden to witnesses. *See In re Telescopes Antitrust Litig.*, 2021 WL 1541692, at *2 (N.D. Cal. Apr.
25 20, 2021) (DeMarchi, J.) (requiring parties in separate cases to coordinate on taking depositions of
26 witnesses relevant to both matters, and noting "the Court's authority to manage discovery and to require
27 coordination in the interest of justice"); *Tawnsaura Grp., LLC v. Maximum Human Performance, LLC*,
28 2012 WL 12331032, at *3 (C.D. Cal. Nov. 7, 2012) (coordinating discovery such that witnesses would

1 be deposed only once and “scheduled for enough time to cover all [] individual issues, with common
2 issues handled in a coordinated and nonduplicative manner,” and further requiring the parties to “agree
3 on a number of common discovery requests . . . with a small number of additional requests”).

4 Meta has thus proposed a framework that balances the discovery already underway and the
5 efficiencies that can be gained by coordinated discovery going forward as this Court directed.

6 **2. INTERIM DISCOVERY DEADLINES**

7 ***Plaintiffs’ Statement:***

8 The *Tax* Plaintiffs agree with the Court that the parties need interim deadlines to ensure
9 document production is completed on a timely basis in this case, particularly if depositions are to be
10 coordinated across the Three Cases. Furthermore, unless concrete deadlines are set, the parties will be
11 left without milestones from the Court that, when missed, provide the parties opportunities to bring
12 their unquestionably ripe disputes before the Court in a coordinated manner (*i.e.*, fewer separate
13 hearings). Accordingly, the *Tax* Plaintiffs propose that the following interim document-production
14 deadlines: (1) final completion of all requested data about class representatives and proposed classes
15 and subclasses due ninety (90) days from the date of the entry of the scheduling order, (2) substantial
16 completion of document production due one hundred twenty (120) days from the date of the entry of
17 the scheduling order, and (3) final completion of document production be due ninety (90) days before
18 the close of discovery. The *Tax* Plaintiffs also propose that the coordination order include a requirement
19 that the parties enter a stipulation authenticating all documents produced so that the parties need not
20 spend deposition time authenticating documents.

21 The *Tax* Plaintiffs disagree with Meta that the interim-deadlines approach generally suggested
22 by the Court and incorporated into a specific proposal would favor speed over substance. To the
23 contrary, substance and speed are not at cross purposes in discovery; indeed, in aggregate litigation like
24 this, setting interim deadlines may be the only way to ensure document production will be complete in
25 substance before the close of discovery. The *Tax* Plaintiffs also disagree that its interim deadlines are
26 unrealistic, given that they provide Meta much more time to complete its document production than
27 the 30-day default provided by the Federal Rules of Civil Procedure. Should Meta fail to meet its
28 document-production deadlines for excusable reasons, it will have the opportunity to explain that to

1 the *Tax* Plaintiffs when they are required to meet and confer, and, if such dispute is not resolved then,
2 it will have the opportunity to be heard by this Court if and when the time comes.

3 The Tax Plaintiffs have been directed to participate in discovery planning activities—and have
4 done so quickly and substantively—since Judge Illston referred the *Tax* Cases to this Court for
5 discovery. Meta’s position that the *Tax* Cases should not have interim deadlines undermines Judge
6 Illston’s referral and the hard work of this Court and the parties.

7 ***Meta’s Statement:***

8 No case schedule has been set in this matter. Plaintiff’s Consolidated Complaint was filed on
9 May 15, 2023. The parties have not held a Rule 26(f) conference. Meta believes, as to the *Tax* matter,
10 that it makes the most sense for the Court and the parties to address interim discovery deadlines once
11 the Court has determined to what extent discovery across *Healthcare*, *Tax*, and *Gershzon* should be
12 coordinated. In any event, the interim deadlines proposed by Tax Plaintiffs are simply not realistic for
13 an action of this complexity. For example, Tax Plaintiffs propose that substantial completion of
14 document production occur only 120 days after entry of a scheduling order. These deadlines would
15 deprive the parties of the time and flexibility necessary to complete discovery, prioritizing speed over
16 substance in a manner that could undermine the very coordination the Court has directed the parties to
17 consider. Meta’s proposal allows the parties to confer further, after the Court has weighed in on how
18 best to coordinate discovery across the Pending Cases.

1 Dated: May 16, 2023

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CIVIL L.R. 5-1(h)(3) ATTESTATION

Pursuant to Civil Local Rule 5-1(h)(3), I, Patrick Yarborough, hereby attest under penalty of perjury that concurrence in the filing of this document has been obtained from all signatories.

Dated: May 16, 2023

By: /s/ Patrick Yarborough